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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)	
)	
Access Charge Reform)	CC Docket No. <u>96-262</u>
)	
Price Cap Review for Local Exchange Carriers)	CC Docket No. 94-1
)	
Tariffs Implementing Access Charge Reform (MCI Emergency Petition for Prescription))	CC Docket No. 97-250 RM-9210
)	

COMMENTS OF OPERATOR COMMUNICATIONS, INC.

Operator Communications, Inc. d/b/a Oncor Communications, Inc. ("OCI"), by its attorneys, hereby submits its comments in the above-captioned consolidated proceedings and states as follows:

By public notice issued October 5, 1998, the Commission invited interested persons to update the record on matters related to access charge reform and to comment on several petitions and other filings proposing changes to the rules for imposition of access charges by incumbent local exchange carriers subject to price cap regulation.¹ OCI is a competitive interexchange telecommunications common carrier whose primary business is the provision of operator-assisted long distance calling services. As with other interexchange carriers, payment of Commission-regulated access charges to incumbent local exchange carriers ("LECs") is a major component of OCI's costs of providing service, and is an important factor in establishing the rates which it charges consumers of its service.

¹Public Notice - "Commission Asks Parties to Update and Refresh Record For Access Charge Reform and Seeks Comment on Proposals for Access Charge Reform Pricing Flexibility," FCC 98-256, released October 5, 1998 ("October 5 Public Notice").

Thus, OCI, as well as its consumers, are profoundly affected by the manner in which local exchange carriers are permitted to impose access charges, and by the costs which those charges may recover.

In inviting interested persons to update and refresh the record on access charge reform, the Commission notes that several incumbent LECs, including Bell Atlantic and Ameritech, have made proposals to permit increased pricing flexibility, and that several petitions have been received asking the Commission to take a more prescriptive approach to access charge pricing.² In addition, the Commission has invited parties to submit updated information regarding the appropriate productivity offset or "X factor" to be applicable to price cap LEC access charges.

OCI has chosen to utilize this occasion to bring to the Commission's attention one anomaly in the current pricing of access services by price cap-regulated LECs and asks the Commission to rectify that anomaly. That anomaly involves the practice of such LECs of passing through to their access charge customers the costs of those LECs' own universal service contributions as exogenous charges. The growing size of this anomaly is illustrated by a recent tariff transmittal filed by Bell Atlantic. On September 16, 1998, Bell Atlantic submitted Transmittal No. 519 to NYNEX Tariff FCC No. 1 and Transmittal No. 1079 to Bell Atlantic Tariff FCC No. 1. Those transmittals were submitted for the purpose of recovering from access customers a \$7.1 million increase in Bell Atlantic's universal service support exogenous amount for the fourth quarter 1998. This latest effort by incumbent LECs to foist upon access customers increases in their universal service contributions

²These petitions seeking a prescriptive approach include a December 9, 1997 petition filed jointly by the Consumer Federation of America, the International Communications Association, and the National Retail Federation, and a February 24, 1998 petition filed by MCI Telecommunications Corporation.

highlights and heightens a facial inconsistency in the Commission's rules and policies governing universal service contributions and access charge recovery of those contributions.

On May 8, 1998, the Commission released its Universal Service Order. See Federal-State Joint Board on Universal Service (Report and Order), 12 FCC Rcd 8776. In that order, the Commission held that incumbent LECs subject to price cap regulation would be permitted to treat their universal service contributions as "exogenous cost changes."³ As an exogenous cost, those LECs' universal service contributions may be added to access charge levels and recovered by the LECs from their access customers. That treatment appears to be facially inconsistent with the requirement articulated elsewhere in the very same order that universal service contributions should be based on "end user telecommunications revenues."⁴

Typically, access customers are not end users. They are themselves telecommunications carriers who purchase access for the express purpose of originating or terminating their end user customers' interexchange calls. Stated simply, the typical access customer "resells" that service as a component of its own service provided to end users. As with other resold services, inclusion of universal service costs in the prices for the services being resold combined with the obligation on those access customers to remit their own universal service contributions based on revenues derived from their provision of telecommunications services to end users results in a double payment of universal service contributions by the access customers. The first payment is made by the access customer to the LEC providing access service as a surcharge to the access charges assessed by the LEC; the second payment is made by the access customer to the universal service fund, pursuant to

³12 FCC Rcd at 9171 (¶ 773).

⁴*Id.* at 9206 (¶ 843).

invoices rendered by the Universal Service Administrative Corporation, based on revenue reports filed by the access customer. This seems to be the same “double payment problem” which the Commission sought to eliminate in its Universal Service Order ⁵

Ultimately, all universal service costs are borne by the consuming public. When an access customer is subject to payment of universal service costs, it will seek to recover those costs from its consumers, irrespective of whether the recovery is “buried” in its retail rates or is recovered as a separate “line item” on consumer invoices.⁶ Moreover, when that same access customer also is subject to access costs which include payment of its access service vendors’ universal service contribution amounts, the access customer must find a way to recover its costs of that universal service payment as well. This is the direct end-user impact of the double payment problem which the Commission committed itself in the Universal Service Order to eliminating.

The impact of universal service costs on end user telephone service rates already is well-documented and has generated considerable public controversy and criticism of the Commission. OCI respectfully requests that the Commission utilize this “update the record” portion of its access charge and universal service deliberations to eliminate the anomalous situation of imposing double universal service obligations on access customers, first as customers of access service, second as telecommunications carriers -- an anomaly which is resulting in unnecessarily high end user rates for telecommunications services. Rectification of that situation at this time would be consistent with the Commission’s express acknowledgment as articulated in its October 5, 1998 public notice that

⁵*Id.*

⁶This is true for the largest access customers, *e.g.*, AT&T and MCI WorldCom, as well as for smaller access customers like OCI.

implementation of universal service support requires changes to access charges and that universal service and access charge reform will be considered together.⁷

In addition to the aforementioned double impact on consumers resulting from inclusion in access charges of incumbent LECs' universal service contributions as exogenous costs, this anomaly, if allowed to continue, will have an adverse impact on interexchange competition, and will therefore be violative of the universal service principle of competitive neutrality adopted by the Commission in its Universal Service Order as one of the guiding principles of the universal service program.⁸ It is well-documented that many incumbent LECs already are competitors in the interexchange services marketplace, and that the largest of the incumbent LECs -- the Bell Operating Companies -- are poised to enter the interexchange market on an in-region basis as soon as they become authorized by the Commission to do so pursuant to Section 271 of the Communications Act.⁹ Like all other interexchange competitors, those companies will be subject to universal service contributions based on their interexchange service revenues; unlike their non-incumbent LEC interexchange competitors, incumbent LECs will enjoy the entitlement to receive additional revenues from their access customers (who are also their interexchange competitors) to cover their payment of universal service contributions as access charge exogenous costs. Irrespective of separate subsidiary and accounting safeguard requirements (which will apply to BOCs but not to other incumbent LECs), those companies and their shareholders will derive the benefit of funds from their competitors to cover portions of their universal service costs. Since such funding will not be available to those

⁷October 5 Public Notice at n. 3.

⁸12 FCC Rcd at 8801 (¶¶ 46-47).

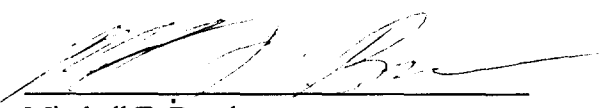
⁹47 U.S.C. § 271.

interexchange competitors who are not also access service providers, the treatment of incumbent LEC universal service payments as exogenous costs affords those companies a substantial cost advantage over their non-incumbent LEC interexchange service competitors, and therefore violates the Commission's universal service principle of competitive neutrality.

For the reasons stated herein, OCI respectfully urges the Commission to adhere to its stated principle that universal service contributions be based on end user revenues by clarifying that price cap LECs not be permitted to include in their access charges their own universal service contributions as exogenous costs.¹⁰

Respectfully submitted,

OPERATOR COMMUNICATIONS, INC.
d/b/a ONCOR COMMUNICATIONS, INC.



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October 26, 1998

¹⁰OCI does not wish at this time to extensively comment on the policy debate between advocates of a prescriptive approach to access pricing and those who favor a market-driven approach, other than to note that the notion that LECs should be allowed to recover their own universal service charges from captive customers of their access services as "exogenous costs" flies in the face of claims that access services are subject to any level of competition warranting their pricing of those services based on the providers' perceptions of the market.

CERTIFICATE OF SERVICE

I, Melodie Kate, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "*Comments of Operator Communications, Inc.*" in CC Docket Nos. 96-262, 94-1, and 97-250, was served by hand delivery this 26th day of October, 1998 on the following:

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